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P24786.A04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Gennadi FINKELSHTEIN et al. Confirmation No. 6277
Appl. No. : 10/824,443 Group Art Unit: 1795
Filed : April 15, 2004 Examiner: M. S. Siddiquee
For : FUEL CELL WITH REMOVABLE/REPLACEABLE CARTRIDGE
AND METHOD OF MAKING AND USING THE FUEL CELL AND
CARTRIDGE

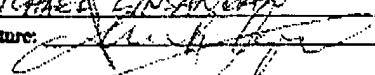
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Sir:

In response to the Examiner's restriction requirement of July 11, 2008, the time set for response being one month, i.e., August 11, 2008. Applicant hereby elects the invention of Group II directed to claims 35-53 with traverse.

In the instant Official Action, the Examiner indicated that all claims (i.e., claims 1-117) were subject to restriction under 35 U.S.C. § 121. The Examiner restricted the claimed invention into Group I, including 1-31, 72-90 and 91-110, and drawn to a fuel cell system, classified in class 429, subclass 34, Group II, including claims 35-53, and drawn to a method of assembling a cartridge, classified in class 137, subclass 15.08 and 1517, Group III, including 54-71, and drawn to a cartridge, classified in class 220, subclass 530, and Group IV, including 111-117, and drawn to a method of refilling a fuel cell, classified in class 429, subclass 17.

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The Examiner asserted that the inventions of Groups I - IV are distinct from each other under M.P.E.P. § 806.06, § 806.05(c) and § 806.05(e).

In addition to the restriction, the Examiner, while asserting that no claims are generic, indicated that if Group I is elected, an election of one of three species would also be required, i.e., if Group I was elected, Applicant is required to elect either Species "a" directed to claims 1-31, Species "b" directed to claims 72-90, or Species "c" directed to claims 91-110, and also that if Group III is elected, an election of one of two species would also be required, i.e., if Group III was elected, Applicant is required to elect either Species "a" directed to claims 111-115 or Species "b" directed to claims 116 and 117.

Applicant respectfully submits that the instant restriction requirement is improper at least because the Examiner has omitted one of the two criteria for a proper restriction requirement now established by the U.S. Patent and Trademark Office policy. That is, as set forth in M.P.E.P. § 803, "an appropriate explanation" must be advanced by the Examiner as to the existence of a "serious burden" if the restriction requirement were not required.

While the Examiner has alleged possible distinctions between the identified groups of invention, the Examiner has not shown that a concurrent examination of Groups I -IV, and each species, would present a "serious burden." In fact, other than setting forth form language, the Examiner has failed to specify any appropriate statement specific to the instant application that the search areas required to examine the invention of Group I would not overlap into the search areas for examining the invention of Groups II, III and IV, and vice versa.

Applicant respectfully submits that the search for the combination of features recited in the

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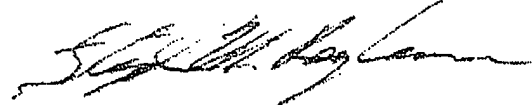
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claims of the above-noted groups, and the individual species, if not totally co-extensive, would appear to have a very substantial degree of overlap. Indeed, the Examiner has acknowledged that the inventions of at least Groups I and IV are classified in the same class, i.e., class 429. Because the search for each group and species of invention is apparent substantially the same (for purposes of examination), Applicant submits that no undue or serious burden would be presented in concurrently examining Groups I-IV (including each identified species). Thus, for the above-noted reasons, and consistent with the Office policy set forth above in M.P.E.P. § 803, Applicant respectfully requests that the Examiner reconsider and withdraw the restriction and species requirement in this application.

For all of the above reasons, the Examiner's restriction is believed to be improper. Nevertheless, Applicant has elected, with traverse, the invention defined by the Examiner as Group II, directed to claims 35-53, in the event that the Examiner chooses not to reconsider and withdraw the restriction and/or species requirement. As such, at least claims 35-53 are ready for examination.

Please charge any additional fees necessary for consideration of the papers filed herein and refund excess payments to Deposit Account No. 19-0089.

Respectfully submitted,
Gennadi FINKELSHTEIN et al.



Neil F. Greenblum
Reg. No. 28,394

August 11, 2008
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191

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Stephen M. Roylance
Reg. No. 31,296